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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KEVIN QUILLINAN

Plaintiff,

v.

AINSWORTH, et al.

Defendants

)

) Case No. 4:17-cv-00077

)

) **DEFENDANTS' OPPOSITION TO**

) **PLAINTIFF'S MOTION TO PROCEED IN**

) **FORMA PAUPERIS ON APPEAL**

) Judge: The Honorable Kandis A. Westmore

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) Action Filed: 01/06/2017

) Amended Complaint Filed: 03/20/2017

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)

Defendants SRG 414 Lesser LLC, Russell Ainsworth, Bruce Goldstone, Jon Loevy, Michael Kanovitz, Ashley Peterson, Richard Silverstein, Andrew Thayer, Daniel Bornstein, Dianne Murphy, Silverstein Realty Group LLC, SRG Manager LLC, Hayden Manager LLC, Daniel Fineman, Zivorad Zivanovic, Gospa Lukic, Daniel Cheung, and Dmitry Shkolnikov (collectively, "Defendants"), hereby oppose Plaintiff's Motion to Proceed *In Forma Pauperis* on Appeal (Dkt. No. 108), and in support state the following:

1. On May 10, 2018, this Court granted Defendants' Motions to Dismiss (Dkt. Nos. 35 & 43) by issuing an Order dismissing Plaintiff's First Amended Complaint with prejudice and

1 entered judgment in favor of Defendants and against Plaintiff. (Dkt. No. 102).¹

2 2. On June 2, 2018, Plaintiff filed a Rule 59 Motion for New Trial, Or in the
3 Alternative, a Motion for Reconsideration of Judge Westmore’s Order Dismissing With Prejudice
4 Plaintiff’s Claim (Dkt. No. 104). Defendants filed a response in opposition to this motion on June
5 6, 2018 (Dkt. No. 105) and – earlier today – the Court denied Plaintiff’s motion (Dkt. No. 109).
6 Additionally, Plaintiff filed a Motion for Leave to Appeal *In Forma Pauperis* on June 11, 2018
7 (Dkt. No. 108).

8 3. Pursuant to 28 U.S.C. § 1915(a)(3), “An appeal may not be taken in forma
9 pauperis if the trial court certifies in writing that it is not taken in good faith.” An Appeal is in
10 “good faith” where it seeks review of any issue that is “nonfrivolous.” *Hooker v. American*
11 *Airlines*, 302 F. 3d 1091, 1092 (9th Cir. 2002). An issue is “frivolous” if it has “no arguable basis
12 in fact or law.” *Adams v. Vivo, Inc.*, No. C 12-01854 DMR, 2012 WL 6131072, at *1 (N.D. Cal.
13 Dec. 10, 2012) (citing *O’Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990)); *see also Calloway*
14 *v. Contra Costa Cty. Jail Corr. Officers*, No. C01-2689SBA, 2007 WL 831817, at *2 (N.D. Cal.
15 Mar. 19, 2007); *Ortega v. Barbasa*, No. 13-17074, 2014 WL 460019, at *3 (N.D. Cal. Feb. 3,
16 2014); *Emrit v. Yahoo! Inc.*, No. C 13-5951 SBA, 2014 WL 3841015, at *4 (N.D. Cal. Aug. 4,
17 2014). “The § 1915(a)(3) determination remains within the jurisdiction of the trial court after the
18 filing of the appeal as a step that aids in the appeal.” *Ha v. U.S. Atty. Gen.*, No. C 09-5281 JL,
19 2010 WL 3219301, at *1 (N.D. Cal. Aug. 11, 2010) (citing *In re Rains*, 428 F.3d 893, 904 (9th
20 Cir. 2005)).

21 4. As set forth in Defendants’ motions to dismiss (Dkt. Nos. 35 and 43), replies in
22 support thereof (Dkt. Nos. 52 and 59), and this Court’s Order and entry of judgment dismissing
23 the case with prejudice (Dkt. No. 102) (all of which Defendants hereby incorporate into this
24 Opposition), Plaintiff’s purported RICO action has no arguable basis in fact or law. This Court
25 acknowledged the frivolous and baseless nature of this action by finding that this case was ripe to

26
27 ¹ Defendants’ Motions to Dismiss had also previously been granted by this Court on October 5, 2017, but the Ninth
28 Circuit vacated this judgment and order and remanded the case by virtue of some defendants remaining unserved.

1 be dismissed with prejudice without need for oral argument, noting that amendment would be
2 “futile”: “the undersigned GRANTS the motions to dismiss without leave to amend, because any
3 amendment would be futile” (Dkt. No. 102 at 1).

4 5. In contending with this litigation, Defendants have incurred significant costs, and
5 these costs will continue to accrue in having to expend considerable time and resources to achieve
6 the inevitable result of dismissing an utterly frivolous appeal. In a sprawling and rambling
7 Complaint in which he named 67 defendants, Plaintiff foisted his meritless allegations upon
8 individuals and entities with no connection to Plaintiff in a deliberate attempt designed to extort a
9 nuisance settlement from and to inflict maximum collateral damage and disruption upon any
10 entity or person connected to Defendants who dared to legally terminate his wife’s lease.
11 Quillinan’s vengeful exploitation of the judicial process has wrought some of its intended effects,
12 as for instance, Defendant SRG 414 Lesser LLC has been billed over \$30,000 in legal costs by
13 counsel for Defendant KeyPoint Credit Union for work performed in conjunction with this
14 lawsuit. Additionally, while many of the Defendants are attorneys (and, as a result, have been
15 able to handle much of the legal work themselves), those Defendants have certainly expended
16 well over \$100,000 in lost billable time as a result of defending themselves against Plaintiff
17 Quillinan’s baseless lawsuit.

18 6. Plaintiff himself seemingly admits that – as pled – his case has no merit (and,
19 accordingly, his appeal will be nothing more than a colossal waste of time, resources and money).
20 In his recently filed motion seeking reconsideration of the latest dismissal of his meritless claims,
21 Plaintiff stated that he “has recently realized after gaining further information and performing
22 more research, that plaintiff’s claims may have been more properly pleaded under 18 U.S.C.
23 1962(a).” Dkt. No. 104 at 1. Earlier today, this Court denied Plaintiff’s motion, finding that -
24 even if had pled his claims differently – he still lacked standing to bring any RICO claim. Dkt.
25 109 at 2.

26 7. Given that Quillinan has no chance of success on appeal (as even he
27 acknowledges), he must not be permitted to proceed cost-free, plowing ahead unrestrained and
28

1 with reckless abandon to impose punishing externalities on parties that have not done him the
 2 slightest harm, while Defendants alone shoulder the burden of a heavy nuisance tax in time and
 3 money to formally dispose of an appeal that is a non-starter. The Court must halt Quillinan's
 4 unabated abuses by declaring what is axiomatic at this point: that this appeal is most certainly not
 5 taken in good faith.

6 CONCLUSION

7 For all the foregoing reasons stated above and in Defendants Motions to Dismiss (Dkt.
 8 Nos. 35 and 43), replies in support thereof (Dkt. Nos. 52 and 59), this Court's Order and entry of
 9 judgment dismissing the case with prejudice (Dkt. No. 102 and 103), and this Court's Order
 10 denying Plaintiff's Motion for Reconsideration (Dkt. No. 109), Defendants respectfully request
 11 that this Court deny Plaintiff's motion to proceed *in forma pauperis* on appeal, and pursuant to 28
 12 U.S.C. § 1915 (a)(3), certify in writing that this appeal may not be taken *in forma pauperis* as it is
 13 not taken in good faith.

14
 15 Respectfully submitted,

16 /s/ Joel Feldman

17 Joel Feldman

18 *Pro Se* and as Attorney for Defendants SRG
 19 414 Lesser LLC, Russell Ainsworth, Bruce
 20 Goldstone, Jon Loevy, Michael Kanovitz,
 21 Ashley Peterson, Richard Silverstein,
 22 Andrew Thayer, Daniel Bornstein,
 23 Dianne Murphy, Silverstein Realty Group
 24 LLC, SRG Manager LLC, and Hayden
 25 Manager LLC, Daniel Fineman Dmitry
 26 Shkolnikov, Zivorad Zivanovic, and Gospa
 27 Lukic
 28

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on June 14, 2018, this Opposition to Plaintiff's Motion to Proceed *In Forma Pauperis* on Appeal was served upon all parties of record via the ECF system and via email.

/s/ Joel Feldman
Attorney for Defendants

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